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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/627,462	07/25/2003	Marlene Ann Sexson	SXS-031	3243

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EXAMINER

WILLATT, STEPHANIE L

ART UNIT PAPER NUMBER

3732

DATE MAILED: 12/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/627,462

Applicant(s)

SEXSON, MARLENE ANN

Examiner

Stephanie L. Willatt

Art Unit

3732

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 25 July 2003.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Objections

1. Claims 1 and 14 are objected to because of the following informalities:
 - In line 7 of claim 1, "each" should probably be --the--, since "at least one of said bristle arm and said handle arm" is alternative language.
 - It seems that claim 14 should depend from claim 13 rather than claim 12, since claim 14 recites "the cardboard". Claim 14 will be examined as though it depends from claim 13, since this is most likely how the claim was meant to be written.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 2, and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Narwani.

Narwani discloses a folding toothbrush comprising a bristle arm with bristles attached to one end and a handle arm (device 10) attached to the other. (Although the

Art Unit: 3732

handle arm (device 10) in Narwani is meant to be a tongue scraper, it is capable of being used as a handle.) The handle arm (device 10) pivots about the end of the bristle arm so that the free end of the handle arm moves in an arc in the plane that generally includes the two arms of the toothbrush (50) and that is generally perpendicular to the bristle axis, as explained in column 2, lines 39-44. The handle arm is manufactured from sheet plastic comprising polyvinyl chloride, as explained in column 2, lines 45-50. Polyvinyl chloride is a type of vinyl.

4. Claims 1, 2, and 4 are rejected under 35 U.S.C. 102(b) as being anticipated by Ludington.

Ludington discloses a folding toothbrush comprising a bristle arm (back 1) with bristles (2) attached to one end and a handle arm (3) attached to the other. The handle arm (3) pivots about the end of the bristle arm (back 1) so that the free end of the handle arm moves in an arc in the plane that generally includes the two arms (back 1 and handle arm 3) of the toothbrush and that is generally perpendicular to the bristle axis, as explained in lines 38-58 of page 1. The arms (back 1 and handle arm 3) are attached to each other by a solid rivet (pin 5').

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

Art Unit: 3732

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 3, 5, 6, 8-10 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Narwani.

Narwani discloses the features discussed above, but not that the arms are attached to each other by an annular grommet or brad or that the bristle arm is also manufactured from vinyl sheet plastic that is between 0.008 and 0.5 inches in thickness. It would have been obvious to one having ordinary skill in the art at the time the invention was made to pivotally attach the arms to each other by an annular grommet or a brad, since they are both well-known ways to pivotally attach elements.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the toothbrush bristle arm of Narwani out of sheet plastic that is between 0.008 and 0.5 inches in thickness, in order to achieve a desired strength and rigidity of the device as well as to lower manufacturing costs by using the same type of sheet plastic for the bristle arm as used for the handle arm (the desire to lower manufacturing costs is discussed in column 2, lines 45-51). The sheet plastic is between 0.013 and 0.018 inches (column 2, lines 34-37), which is between 0.08 and 0.1 inches. Regarding claim 10, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make the handle arm out of sheet plastic that is between 0.08 and 0.5 inches in thickness, in order to achieve a desired strength and rigidity of the device as well as to lower manufacturing costs by using the same

Art Unit: 3732

type of sheet plastic for the bristle arm as used for the handle arm (the desire to lower manufacturing costs is discussed in column 2, lines 45-51).

7. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Narwani in view of Goldenberg.

Narwani discloses the features discussed above, but does not disclose floss located in the handle arm. Goldenberg discloses floss (35) in the handle (20) of a toothbrush, as shown in Figures 10-12 and discussed in column 4, lines 11-25. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the handle arm of Narwani with floss attached to it, as taught by Goldenberg, in order to provide a way for the user to be able to floss his teeth without touching the floss.

8. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Narwani Chodorow.

Narwani discloses the features discussed above, but does not disclose a detachable toothpick in the handle arm. Chodorow discloses a flosser (10) that includes a detachable toothpick (314) integrally formed in the handle, as shown in Figure 28 and discussed in column 6, lines 6-31. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the handle of Narwani with a detachable toothpick integrally formed in the handle, as taught by Chodorow, in order to

Art Unit: 3732

provide two different devices at a low cost of manufacturing and packaging only one, and to provide a convenience for the user to purchase and only carry one item.

9. Claims 13-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Narwani in view of Curran.

Narwani discloses the features discussed above, but does not disclose that the arms are made of laminated cardboard. Curran discloses a toothbrush with a cardboard bristle arm (body 14) and handle arm (end 17), as discussed in column 1, lines 47-51. It is well-known that toothbrushes get wet, since people put them in their mouths during use, and it is also well-known that cardboard is laminated to prevent it from getting wet or torn (for example, identification cards). It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the arms of Narwani out of cardboard, as taught by Curran, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416 (CCPA 1960). It would have been obvious to laminate the cardboard, since it is well-known to laminate cardboard in order to prevent it from getting wet or torn.

10. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Narwani in view of Shimizu ('522).

Narwani discloses the features discussed above, but does not disclose that the arms are made of bamboo. Shimizu discloses a toothbrush with a bamboo bristle arm (brush head 2) and handle arm (brush handle 1), as discussed in column 2, lines 12-21. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the arms of Narwani out of bamboo, as taught by Shimizu, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416 (CCPA 1960).

11. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Narwani in view of Gordon.

Narwani discloses the features discussed above, but does not disclose that toothpaste is applied to the toothbrush in advance of purchase by a consumer. Gordon discloses a toothbrush (10) with toothpaste (20) applied to it in advance of purchase by a consumer, as discussed in column 2, lines 39-42. It would have been obvious to one having ordinary skill in the art at the time the invention was made to coat the toothbrush of Narwani with toothpaste in advance of purchase by a consumer, as taught by Gordon, in order to provide the toothbrush ready to be used without having to separately purchase toothpaste.

Art Unit: 3732

Conclusion

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Briggs, Mills, Persad et al., Spitz, and Smith disclose foldable toothbrushes. Hammond discloses a spoon handle including a detachable toothpick integrally formed therewith. Gustavel and Thurston disclose a toothbrush with a removable toothpick in the handle. Shimizu ('078) discloses a toothbrush with a bamboo handle. Cameron discloses toothpicks detachably attached to each other.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephanie L. Willatt whose telephone number is (571) 272-4721. The examiner can normally be reached on M-F (8:30-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin P. Shaver can be reached on (571) 272-4720. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Stephanie Willatt
Patent Examiner
Art Unit 3732